IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FIRST DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 2098 of 1993

Between:

Kancherla Laxminarayana, Bandlapudi Subbaiah & Company, Guntur
rep. by B. Sambasiva Rao, Partner

..... PETITIONER

AND

1 Special Officer & Competent Authority, Urban Land Ceilings,
5/2, Arundalpet, Guntur
2 The Commissioner of Urban Land Ceilings, Nampally Road, Hyderabad
3 Govt. of A.P. rep. by Secretary for Revenue (U.L.C.)
Secretariat Buildings, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to declare the entire proceedings in Urban Land Ceiling Case No.1491/1976 on the file of the 1st Respondent including Sec. 9 and Sec. 10 of the appellate order in C.No.G.N.T./83/91 dt: 25-9-1992 of the 2nd respondent as null and void and to quash the same by the issue of Writ of Certiorari or any other suitable Writ or direction.

Counsel for the Petitioner: MR.P.M.GOPALA RAO

Counsel for the Respondents: GP FOR REVENUE

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No.2098 of 1993

O R D E R :

The petitioner herein, who is a declarant under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as 'the Act') filed this Writ Petition seeking a Writ of Mandamus to declare the entire proceedings in urban land ceiling case No.1491 of 1976 on the file of the first respondent including the appellate order therein passed by the second respondent in C.No. G.N.T./83/91, dated 25.09.1992 under Sections 9 and 10 of the Act, as null and void.

The case of the petitioner is that petitioner firm is a partnership firm consisting of 5 partners and accordingly, the individual partners filed separate declarations and also a distinct declaration on behalf of the firm. In pursuance of the same, a draft statement was issued on 10.10.1980 under Section 8(1) of the Act declaring the surplus holding. The petitioner also filed an application under Section 20 of the Act seeking exemption, which is kept pending. The petitioner's claim is that having regard to the fact that they are individuals, as per the principles laid down they are entitled to the benefit. Apart from that the petitioner also claimed that certain extent of land is wrongly included, which is liable to be set aside. Subsequently, a final statement under Section 9 of the Act was passed on 13.03.1981. Thereafter, on 19.08.1981, notice under Section 10(5) of the Act, has been issued to the petitioner by the first respondent. It is against the said notice, the petitioner sought to file appeal under Section 33 of the Act before the appellate authority namely the second respondent,

which was rejected by the impugned orders dated 25.09.1992 on the ground that in the absence of a proper appeal against the substantive order under Section 9 of the Act, the present appeal against a mere notice under Section 10(5) of the Act, is not maintainable. Challenging the said order, the case of the petitioner is that the petitioner is entitled to various benefits as laid down by the decisions of this Court and also the Apex Court, yet the same have not been given effect to. Therefore, the appellate authority ought to gone into the merits of the case.

The learned Government Pleader appearing on behalf of the respondents sought to repel the said contentions on the ground that as rightly held by the authority the very appeal is not maintainable and the petitioner is not entitled to any such contentions on merits.

Considering the submissions made and also on perusal of the material, the question which falls for consideration is as to whether the petitioner is entitled to raise objection on merits at a stage when notice under Section 10(5) of the Act was issued ?

There is no dispute to the fact that the petitioner firm filed various declarations through its partners and also the firm separately and sought to claim the exemption. Yet, the primary authority passed orders on 10.10.1980 by way of draft statement declaring surplus. Thereafter, on 13.03.1981, final statement was also issued under Section 9 of the Act. Admittedly, no appeal has been filed as against the final statement dated 13.03.1981 nor there is any explanation forthcoming therefor. The appeal under challenge, which has been taken course to by the petitioner, is only against notice under Section 10(5) of the Act issued subsequent to final statement, wherein the petitioner was sought to raise several contentions on merits. The appellate authority held that since no appeal having been filed as against the order under Section 9 of the Act, it is not open for the

petitioner to venture upon, on merits, at the stage or against the notice issued under Section 10(5) of the Act and therefore, dismissed the appeal.

Considering the submissions made and also on perusal of the material, it is seen that even the affidavit filed in support of the Writ Petition does not give any reason nor justification for not filing appeal against the order under Section 9 of the Act. Admittedly, the present appeal is only against notice issued under Section 10(5) of the Act. Once a final determination is made under Section 9 of the Act in regard to the holding of surplus and the same having not been challenged as per the remedies contemplated under Law, it is not open for the petitioner to fall back and raise once again similar such contentions at any later stage, more so against the notice issued under Section 10(5) of the Act. In respect of such notice, no irregularity or illegality has been pointed out. In the circumstances, it is to be held that the petitioner is not entitled to raise any objections on merits at the stage of issuing notice under Section 10(5) of the Act. Hence, I do not find any error in the orders passed by the appellate authority. There are no merits in the Writ Petition.

The Writ Petition is accordingly dismissed. No costs.

01.11.2004

DRK

Copy to:

1 Special Officer & Competent Authority, Urban Land Ceilings,

5/2, Arundalpet, Guntur

2 The Commissioner of Urban Land Ceilings, Nampally Road, Hyderabad

3 The Secretary for Revenue (U.L.C.), Secretariat Buildings, Hyderabad

4 Two CCs to the G.P. for Revenue, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5 Two CD copies.